



**Business Law Reform and
Alternative Dispute Resolution
Development**

Under the USAID/Madagascar Legal, Regulatory and
Judicial Reform Activity
USAID Contract No. 623-C-00-98-00029-00

**Madagascar Participation & Poverty (P&P) Project
Legal, Regulatory, Judicial Reform Activity**

FIRST ANNUAL REPORT
June 1, 1998 through June 30, 1999

Submitted November 8, 1999

ARD, Inc. and Checchi and Company Consulting, Inc.
1899 L. Street, N.W., Suite 800
Washington, DC 20036-3804
Washington Telephone: 202-452-9700
Local Telephone: 033-110-3970
e-mail: ardchechchi@dts.mg /treynanders@chechiconsulting.com

JURECO Etudes et Conseils S.A.
Boîte Postale 682
Lot IV M 66 rue Dr. Raseta Andraharo
Antananarivo 101, Madagascar
Telephone: 22-202-37
e-mail: somagi@bow.dts.mg

**Madagascar Participation & Poverty (P&P) Project
Legal, Regulatory, Judicial Reform Activity**

**Commercial Law Reform and
Alternative Dispute Resolution Components**

Contract No. 623-C-00-98-00029-00

**FIRST ANNUAL REPORT
June 1, 1998 through June 30, 1999**

Submitted November 8, 1999

Submitted to:

*USAID/Madagascar
Villa Vonisoa III
Avenue Dr. Ravoahangy
Anosy, Antananarivo 101
Madagascar*

Submitted by:

*Thomas R. Reynders
Law Development Advisor
ARD, Inc. and Checchi and Company Consulting, Inc. Joint Venture
E-MAIL: treynders@checciconsulting.com*

TABLE OF CONTENTS

| | |
|--|----|
| I. BACKGROUND..... | 1 |
| II. EXPECTED RESULTS | 2 |
| III. SUMMARY OF YEAR ONE ACTIVITIES | 3 |
| A. Preparation of the First Year Work Plan for Components I and II..... | 3 |
| B. Monitoring and Reporting System to Provide Indicator Data and Tracking Measures on the Progress of Legal Reform | 3 |
| C. Scopes of Work for Expatriate and Local Consultant Activities..... | 3 |
| D. Business Law Reform..... | 4 |
| 1. Draft Commentary on Legal Reform Area 2 – Company Law | 4 |
| 2. Review of Existing Legislation: Finance, Company, Property and Labor Law | 5 |
| 3. Draft Commentary on Legal Reform Area 1 - Bankruptcy Law | 5 |
| 4. Commentary and Drafting Assistance on Legal Reform Area 4 – Labor Law | 5 |
| E. Alternative Dispute Resolution..... | 6 |
| 1. Commentary on Draft Arbitration Law | 6 |
| 2. Local Alternative Dispute Resolution Support: Baseline Survey (Milestone 2.4) .. | 6 |
| 3. Alternative Dispute Resolution Support: Baseline Survey (Milestone 2.4) | 7 |
| 4. ADR Training and Promotional Events for the Media (Milestones 2.12; 2.15)..... | 7 |
| 5. ADR Workshops, Promotional Events and Model for a National Arbitration Association (Milestones 2.9; 2.11; 2.14) | 7 |
| IV. RESULTS..... | 9 |
| A. Guiding Principles | 9 |
| 1. Simplicity..... | 9 |
| 2. Transparency..... | 9 |
| 3. Best Practices | 10 |
| B. Business Law Reform..... | 10 |
| 1. Arbitration Law..... | 10 |
| 2. Company and Related Laws | 11 |
| 3. Bankruptcy Law..... | 11 |
| 4. Labor Law | 11 |
| C. Alternative Dispute Resolution..... | 12 |
| D. Evaluation of Results | 13 |
| 1. Business Law Reform | 13 |
| 2. ADR | 14 |

| | |
|---|----|
| V. LEGISLATION MONITORING AND TRACKING TABLES..... | 15 |
| A. Status, Critical Dates and Events of Legislation Reviewed by ARD/Checchi | 15 |
| B. Business Law Reforms and ARD/Checchi Contributions | 16 |
| VI. LEVELS OF EFFORT PROVIDED, BY CLIN | 18 |
| VII. WORK ORDERS | 21 |
| ATTACHMENT 1 YEAR ONE WORK PLAN MILESTONES | 22 |
| Business Law Reform Milestones | 22 |
| ADR Milestones | 22 |
| ATTACHMENT 2 CONTRACT MILESTONES | 23 |
| Business Law Reform | 23 |
| ADR | 23 |

I. BACKGROUND

The USAID-funded Madagascar Participation & Poverty (P&P) Project Legal, Regulatory, Judicial Reform Activity, Commercial Law Reform and Alternative Dispute Resolution Components was awarded to the joint venture of ARD, Inc. and Checchi and Company Consulting, Inc. (ARD-Checchi). The effective date of this contract is June 1, 1998.

The overall objective of the contract is to strengthen Madagascar's legal system in the area of business law and stimulate interest the use of alternative dispute resolution (ADR) mechanisms. Specific activities under the business law reform and ADR components include:

- Conducting a comprehensive review of existing legislation in four areas of business law (finance, company, property and labor) and ADR legislation;
- Drafting reform legislation in collaboration with government and private sector experts;
- Increasing awareness of public-and private-partner stakeholders of the important benefits of legal reform;
- Training members of the legal community in business law and ADR reforms; and
- Supporting the establishment of arbitration body(ies).

II. EXPECTED RESULTS

The inter-related activities listed above fall under the USAID Mission Goal of *Reduced Poverty*. There are three components within that Goal, two Strategic Objectives (SO) and one Special Program Objective (SPO): SO2, *Smaller, Healthier Families*; SO3, *Biologically-Diverse Ecosystems Conserved in Priority Conservation Zones*; and the SPO, *Improved Environment for Private Initiative*.

The ARD/Checchi contract falls under the SPO, *Improved Environment for Private Initiative*, which has two Intermediate Results:

- IR#1.1, *Improved Legal, Policy and Financial Conditions for Investment and Trade*
- IR#1.2, *More Informed and Responsive Public Participation in Economic and Legal Issues*

IR#1.1 contains three Sub-Intermediate Results (Sub-IRs):

- IR#1.1.1, *More Conducive Legal, Regulatory, and Judicial Framework for Business*
- IR#1.1.2, *Expanded Access to Financial Services*
- IR#1.1.3, *Improved Investment and Trade Regime*

IR#1.2 contains two Sub-IRs:

- IR#1.2.1, *Improved Public Information and Dialogue*
- IR#1.2.2, *Improved Economic Analysis for Decision Making*

ARD/Checchi's business law reform and the alternative dispute resolution systems activities contribute to USAID/Madagascar IR #1.1, and in varying degrees to all three of its Sub-IRs. In addition, to a certain extent these activities can also contribute to Sub-IR #1.2.1.

III. SUMMARY OF YEAR ONE ACTIVITIES

The following section reviews contract activities in the first year. The numbers in parentheses following the activity are the milestone numbers assigned in the first Annual Work Plan (June 1, 1998 – June 30, 1999).

A. Preparation of the First Year Work Plan for Components I and II (Milestones 1.1 and 2.1)

In early July 1998, Thomas R. Reynders, the ARD/Checchi Law Development Advisor (LDA), arrived in Antananarivo to meet with USAID and Malagasy counterparts, develop an understanding of the current status of business law reform efforts and the Alternative Dispute Resolution (ADR) systems in Madagascar, and initiate substantive and managerial contract work. His visit lasted for seven weeks. Because the fact situation changed after the USAID Request for Proposal was written and the ARD/Checchi proposal was prepared, the First Year Work Plan updated the Milestones contained in the ARD/Checchi contract, which adopted the Milestones in the ARD/Checchi proposal. In updating the Milestones, no element was removed but several higher goals were added and all Milestones were refined.

The first year work plan was submitted to USAID/Madagascar on August 14, 1998.

B. Monitoring and Reporting System to Provide Indicator Data and Tracking Measures on the Progress of Legal Reform (Milestones 1.2 and 2.3)

On his July/August visit, the LDA analyzed the Milestones contained in the ARD/Checchi contract and First Year Work Plan as the bases for potential measurements for the monitoring and reporting system. The overall purpose of the monitoring and reporting system is to provide USAID/Madagascar with measuring, monitoring and reporting standards and methods for use in evaluating progress on each IR and Sub IR.

Following this analysis, the LDA drafted a proposed monitoring and reporting plan that was submitted to USAID/Madagascar on August 18, 1998 and later approved by USAID.

C. Scopes of Work for Expatriate and Local Consultant Activities

While in Madagascar, the LDA drafted scopes of work under both business law reform and alternative dispute resolution and submitted them to USAID/Madagascar. They were:

1. Business Law Reform

- International Legal Reform Area 2 – Company Law (Milestone 1.6)
- Local Legal Reform Area 2 – Company Law (Milestone 1.6)

- Local Review of Legislation – Finance, Company, Property and Labor Law (Milestone 1.3)
- Local Identification and Justification of Business Laws Requiring Reform – Finance, Company, Property and Labor Law (Milestone 1.5)

2. Alternative Dispute Resolution

- International ADR Support – Baseline Survey of ADR (Milestone 2.4)
- Local ADR Support – Baseline Survey of ADR (Milestone 2.4)

3. Management

- International Management – Law Development Officer
- Local Follow-up and Management

These eight draft scopes of work were submitted to USAID/Madagascar on August 14, 1998.

D. Business Law Reform

Section V. A, p. 15, *infra*, contains a summary of the current status of the laws and regulations on which ARD/Checchi has worked, with critical dates. Section V. B, p. 16, *infra*, describes the significance of these laws and regulations, major ARD/Checchi recommendations and, where possible, an analysis of the extent to which our recommendations were incorporated into the laws and regulations.

1. Draft Commentary on Legal Reform Area 2 – Company Law (Milestone 1.6)

Drawing upon expatriate and Malagasy experts (Mr. Alexander Blumrosen and Prof. Ratiaray Ramarolanto of JURECO), ARD/Checchi reviewed and provided commentary on four draft laws related to the Company Law (the Tradesman's Law, the Competition Law, the Law on the Transparency of Companies and the Law on the Legal Notice for Real Property Mortgages) and one draft implementing decrees (Decree on the Commercial Registry). In the review and commentary process, ARD/Checchi compared the provisions of the related laws with best international standards and similar laws in other countries, prepared written analyses of the advantages and disadvantages of the related laws, provided detailed suggestions on changes, improvements and unresolved issues.

ARD/Checchi submitted a preliminary draft commentary on the related laws to USAID/Madagascar on August 18, 1998. We submitted revised, final commentary on these laws and decrees on September 24, 1998¹.

¹ All have since been enacted or promulgated, with the exception of the Competition Law.

The same ARD/Checchi experts then completed a review and analysis of the Company Law, again comparing the Company Law with the best international standards of model laws and similar laws in other relevant countries. They then prepared a detailed discussion of the advantages and disadvantages of the company law and provided suggestions on changes, improvements and unresolved issues with respect to the Company Law.

ARD/Checchi submitted commentary on the Company Law on October 13, 1998.

In April 1999, Mr. Blumrosen and Prof. Ramarolanto provided further oral commentary on the Company Law to the CRDA during a working visit to Madagascar by Mr. Blumrosen².

2. Review of Existing Legislation: Finance, Company, Property and Labor Law (Milestone 1.3)

In meetings with USAID, the CRDA, and the *Cellule technique*, the LDO, Mr. Louis Rajaonera of JURECO and Prof. Ramarolanto examined the current state of business law reform in Madagascar and collected background documents. To complete the review, Mr. Rajaonera and Prof. Ramarolanto continued meetings with the organizations cited above, other donors, private sector individuals and organizations and local commercial law experts. Prof. Ramarolanto prepared a comprehensive overview of existing and proposed legislation in the area of business law reform, with recommendations for reform.

JURECO completed its review and presented its findings to USAID in a report dated March 15, 1999.

3. Draft Commentary on Legal Reform Area 1 - Bankruptcy Law (Milestone 1.12)

In March and April 1999 ARD/Checchi international expert in the field of Bankruptcy Law, Mr. Blumrosen assisted in the review and drafting of a revised Malagasy Bankruptcy Law, using as reference points the existing law, the Organization for the Harmonization of African Business Law (OHADA) model Bankruptcy Law, and French, American and other relevant bankruptcy laws. Mr. Blumrosen's work included a visit to Madagascar to assist the CRDA and the *Cellule Technique*³.

4. Commentary and Drafting Assistance on Legal Reform Area 4 – Labor Law (No Milestone for a Third Law Reform in Year One)

During an ARD/Checchi legal reform assessment conducted in Madagascar in January of 1999, the Project Manager, Mr. Steven Dinkin, met with the Director of Labor within the Ministry of Civil Service, Labor and Social Welfare (*Ministère de la Fonction Publique, du Travail et des Lois Sociales*). She requested ARD/Checchi technical assistance in drafting a revised Labor

² The CRDA completed its work on the Company Law in September 1999. ARD/Checchi will be asked to provide final commentary on it when the reporter completes a clean draft.

³ The CRDA is expected to address the draft Bankruptcy Law beginning in September 1999, and ARD/Checchi expects to provide further assistance on it.

Code. The Ministry held a national workshop on the first half of the 1995 Labor Code in November 1998 and the Director asked us to provide an international expert in April 1999 to attend a second workshop that was to consider the second half of the Labor Code. The ARD/Checchi expert, Mr. Don Zimmerman, was charged with assisting in assuring that the draft Code met best international standards and conformed to International Labor Organization provisions. He was scheduled to spend three weeks in Madagascar, but the Director found his insights into alternative labor law practices, drawn from American and international examples, so valuable that she asked him to stay an additional month. Mr. Zimmerman was assisted by Mr. Mboara Andrianarimanana of JURECO⁴.

E. Alternative Dispute Resolution

1. Commentary on Draft Arbitration Law⁵

At the request of the Ministry of Justice's *Cellule technique*, ARD/Checchi expert Alexander Blumrosen conducted a complete review and analysis of the Draft Arbitration Law, comparing its provisions with the model UNCITRAL International Arbitration Law, French and American Arbitration Law, and similar laws in other countries in development. Mr. Blumrosen provided a detailed analysis of the advantages and disadvantages of the Draft Arbitration Law, suggestions on changes and improvements and flagged unresolved issues.

ARD/Checchi completed the commentary and submitted it to USAID/Madagascar on September 24, 1998. The National Assembly adopted the Arbitration Law on November 11, 1998 and it was promulgated on December 15, 1998.

2. Local Alternative Dispute Resolution Support: Baseline Survey (Milestone 2.4)

Mr. Rajaonera and Prof. Ramarolanto conducted a baseline ADR survey to determine the present level of awareness of arbitration among public officials, identify both domestic and international ADR issues relevant to economic development in Madagascar, identify legislative requirements for instituting an effective arbitration system in Madagascar, determine the level of interest for establishing a national arbitration association, and identify techniques for increasing awareness for ADR in Madagascar. Mr. Rajaonera and Prof. Ramarolanto also prepared a list of representatives from Ministries, the National Assembly, the judiciary, the legal profession, business leaders and business organizations, and the media to be interviewed in Antananarivo, Tamatave and other cities. This preliminary survey and the contacts developed laid the groundwork for the following activity.

⁴ The Director of Labor requested that Mr. Zimmerman return to Madagascar in September 1999 assist in putting the Labor Code into final draft. He will provide technical advice for four weeks, again working with Mr. Andrianarimanana of JURECO.

⁵ When the First Year Work Plan was drafted, ARD/Checchi did not anticipate working on the draft Arbitration Law in contract year one, and no Milestone listed in the First Year Work Plan relates to the Arbitration Law. The ARD/Checchi lists this as a year two activity under Milestone 2.4.

3. Alternative Dispute Resolution Support: Baseline Survey (Milestone 2.4)

Mr. Howie Clavier, an ARD/Checchi international consultant, in collaboration with Mr. Rajaonera and Mr. Andrianarimanana of JURECO, conducted an ADR baseline survey in four cities - Antananarivo, Antsirabe, Tamatave, and Mahajanga – in January 1999. The team met with judges, lawyers, professors, businessmen and other stakeholders. The survey sought to: (i) determine present awareness ADR options among public officials, the judiciary, the legal profession, the business community and the media; (ii) identify domestic and international ADR issues relevant to economic development in Madagascar; (iii) identify interest in establishing a national arbitration association and arbitration chapters in several cities; identify techniques to increase awareness and support for ADR in Madagascar; and (iv) examine the options for conducting a Round Table on arbitration.

The survey found that awareness was low to non-existent. However, the exercise increased understanding and awareness of arbitration and arbitration options among public officials, as well as the issues surrounding the establishment of an arbitration association and holding a national roundtable. Most significantly, following this survey and the subsequent ADR training and promotional events described in activities 4 and 5 below, both Tamatave and Antsirabe began the process of forming ADR chapters.

4. ADR Training and Promotional Events for the Media (Milestones 2.12; 2.15)

In January 1999 Mr. Clavier, Mr. Rajaonera and Mr. Andrianarimanana conducted a series of ADR promotional/training events. These included a promotional/training presentation at a chamber of commerce meeting in Tamatave, a one-hour interview with a journalist, and a conference at the *Ecole Nationale de la Magistrature et des Greffes* that was attended by representatives from the Ministry of Justice, magistrates, students, judges, and business leaders. The latter conference, opened by the Ministry of Justice's Secretary General and the USAID Mission Director, received both press and television coverage. The half-day program discussed the potential impact of the Arbitration Law and the continuum of ADR processes.

As a result of this activity and the preceding one, ARD/Checchi planned a more ambitious ADR program in April/May, as described below.

5. ADR Workshops, Promotional Events and Model for a National Arbitration Association (Milestones 2.9; 2.11; 2.14)

In April and May 1999 a team comprised of three international experts, Mr. Clavier, Mr. Blumrosen and Mr. Raphael Jakoba, and two local experts, Mr. Rajaonera and Mr. Andrianarimanana from JURECO, conducted a variety of ADR-related tasks both in Madagascar and in their home offices. Before and during the visit of the international experts, all experts participated in the preparation of educational and training materials:

- A pamphlet containing a popularized text of the new Malagasy Arbitration Law;
- A training manual, "Alternative Solutions for Conflict Resolution-An Overview," as a basis for the workshops in Madagascar;

- A curriculum for the Arbitrator Training Seminar;
- A manual of training methods in arbitration practice, with a case study and a collection of articles on arbitration; and
- A document, “The Arbitrator Mission in the Framework of International Arbitration Law and Malagasy Law on Arbitration,” for use in Arbitrator Training Workshops.

The experts planned and conducted training workshops on arbitrator training in Antananarivo, Tamatave and Antsirabe to introduce participants to the contents of the training manual and allow them to assess its relevancy. These workshops were intended for participants already aware of the nature of the arbitration process and, if possible, experienced in the field, so that they brought knowledge of the subject matter to the process of reviewing the draft training manual. Finally, the experts prepared a blueprint for a National Arbitration Association. Using this model and the recommendations of the international experts following their visit to Madagascar, ARD/Checchi will pursue the establishment of a national ADR association and local ADR chapters in several cities in Year Two of the Contract. The experts also recommended deferring the National ADR Round Table until a year after the establishment of the national association, when the focus of the Round Table will be better. ARD/Checchi accepts the validity of this recommendation.

IV. RESULTS

ARD/Checchi notes that before the start of the contract we expected to assist the CRDA in determining which business laws required reform and to promote interest in adopting a new Arbitration Law. However, at the start we found that the CRDA was well into an examination of the Company Law and other related laws, that there was enthusiasm for ADR and a draft Arbitration Law to promote it. These factors did not substantially change the thrust of the first contract year, but instead of analyzing all business laws and recommending specific areas for reform, we went directly to assisting the CRDA and the *Cellule technique* in their drafting work. And instead of using the first year trying to gain support for ADR law reform, we had a reform law to review. These factors meant that ARD/Checchi was able to exceed the first year results projected in the contract.

A. Guiding Principles

Working on legal reform in foreign environments demands sensitivity to local institutions and culture, and recognition that no two countries are alike. The solutions offered must be tailored to local circumstances or they will either be rejected or fail in their implementation. Therefore, in ARD/Checchi's approach to this contract we have tried to keep several basic principles in mind.

1. Simplicity

An essential hallmark of an open economy, receptive to foreign investment, is the simplicity of its laws—simple to read and understand, not overly technical and not requiring advanced learning in the local culture. United States U.S. laws are simply drafted and user-friendly so consumers and the companies that must comply with them can understand their impact and act accordingly. The same is true of foreign investment: with simpler laws, it is easier for a foreign investor to weigh potential risks and advantages of their investment decisions. Therefore, many of our suggestions for the laws reviewed aim at simplifying the text of the laws and generally making them more user friendly, easier to understand and easier for the local judges to apply and interpret. This should reduce uncertainty about the legal rules that apply and therefore may remove a barrier to incoming investment.

2. Transparency

In a number of areas, we considered the importance for investors - especially foreign investors - of transparency in business practices. This is very important, for example, with respect to the procedures for the creation and public notice of liens on real and chattel property, so that banks and investors may be fully informed of all liens, rights, and other risks that may be attached to taking certain property. Only with full and complete public notice of such liens and a quick and simple way for such liens to be created and removed, will investors of all kinds feel secure in taking such property as collateral. Without this transparency, the availability of in-country financing and the creation of wealth that can result from leveraging existing assets are limited.

3. Best Practices

In general, we take as our benchmark the best practices that have emerged in various disciplines, and on which there is near universal acceptance. This was the case in our comments on the Corporation Law, where we were often influenced by the emerging consensus on best corporate governance practices. This was also the case for our comments on the Arbitration law, where we were influenced by the growing acceptance of the UNCITRAL Model Law on commercial arbitration as the international standard. The extensive research and study that have gone into creating a system of best practices or a Model Law are useful in analyzing the legal issues in the draft Madagascar laws. The years of collective wisdom will benefit Madagascar, giving it laws that have withstood the test of time, laws that will be familiar to actors in the international community, and will therefore imbue the new laws of Madagascar with credibility and acceptance.

B. Business Law Reform

The GOM has begun to implement a strategy to break the oppressive cycle of poverty that has affected Madagascar since independence through a major and sustained effort to increase in the rate of economic growth. This high growth strategy depends on increasing both consumption and investment, including increased reliance on foreign direct investment. Increasing investor confidence requires adoption of a broad range of reform measures, of which modernizing and reforming the governing legislation and regulations in the fields of finance, company, property and labor law are important steps.

The effort to modernize the laws of Madagascar is a long-term project intended to foster the creation of a safe and modern investment climate. The reform of the commercial laws we have examined, and will continue to examine, is an important and indispensable part of the modernization process. Our recommendations have aimed at creating a system of laws for Madagascar that is fair and simple. However, the reform of legal texts is only a part of a process that must also include training. New legislation, no matter how good in and of itself, will not be effective if the judges, arbitrators and the business community do not understand the changes wrought in their laws.

1. Arbitration Law

Perhaps the most significant results of our review and commentary efforts in contract year one are reflected in the changes made to the Arbitration Law. The *Cellule technique* had prepared a draft law before the contract began. The draft was aimed largely at domestic arbitration and the drafters were considering drawing upon the OHADA model to introduce international arbitration into the draft. ARD/Checchi international expert Alexander Blumrosen provided the *Cellule technique* with a detailed analysis of their draft and strongly urged that the UNCITRAL model Arbitration Law, which is a restatement of international best practices, would afford Madagascar with a better, more universally acceptable system of arbitration. We provided further technical suggestions and commentary on the draft as it evolved. The Arbitration Law, as adopted by the National Assembly in November 1998 and promulgated in December 1998, contains a

UNCITRAL-based section relating to international arbitration. This law puts in place the framework to facilitate foreign investment by allowing investors to ensure that commercial disputes arising from trade with and investment in Madagascar can receive fair adjudication in a jurisdiction of their choice.

2. Company and Related Laws

The CRDA and the *Cellule technique* had already begun consideration of the Company Law and a series of related laws and decrees when the contract began. Two ARD/Checchi experts, Mr. Blumrosen and Professor Ramarolanto, provided commentary on the draft Company Law, four draft laws related to it (the Tradesman's Law, the Competition Law, the Law on the Transparency of Companies and the Law on the Legal Notice for Real Property Mortgages), and one draft implementing decree (the Decree on the Commercial Registry). On the Company Law, our report provided detailed observations on many of the over 900 articles. Among the suggestions that were adopted by the *Cellule technique* were a simplified process for creating a business enterprise, provision for a sole shareholder company, limited public participation in corporations, and a simplification of the number and complexity of corporate forms. The Company Law is still under discussion within the CRDA.

3. Bankruptcy Law

ARD/Checchi provided commentary and technical assistance to the *Cellule technique* as it began its work on redrafting the Bankruptcy Law. Under the existing Malagasy bankruptcy regime there have been only a handful of bankruptcies filed. The ARD/Checchi international expert, Mr. Blumrosen, provided a general review of international best practices in the field. The CRDA is expected to take up the draft Bankruptcy Law prepared by the *Cellule technique* after completing its review of the Company Law in September 1999. ARD/Checchi anticipates providing further technical assistance to the CRDA as it considers this law.

4. Labor Law

In general, the 1995 Labor Code reflects Madagascar's history of extensive governmental control of the economy and the labor market and is ill suited to a free market economy. Both business and labor complain that the Code revision lacks legitimacy because the Ministry and the National Assembly ignored many of their recommendations in the 1995 Code. Numerous key provisions in the Code are vague, incomplete or poorly drafted; e.g., the powers exercised by the Ministry's labor inspectors are more appropriate to public enterprises than to private ones. The application texts, some dating from the 1950's, are anachronistic, confusing, of questionable enforceability and vest too much discretionary power in the Labor Inspectors. The Ministry intends a full revision of the Labor Code and of the application texts. To accomplish these goals, the GOM established the tripartite National Employment Council (*Conseil National de l'Emploi* (CNE)) with government, labor representation and the Employers' Association to draft a new Code.

ARD/Checchi had not anticipated doing any work on the Labor Code in contract year one. However, in January 1999 the Ministry of Civil Service, Labor and Social Welfare requested ARD/Checchi to provide technical assistance to the Ministry and the CNE. In response, we

provided an international expert, Mr. Don Zimmerman, who worked closely with the drafters, spending nearly two months in Madagascar during the spring of 1999. He will return to review the final draft of the Code in September 1999.

In his first visit, Mr. Zimmerman's principal activities consisted of:

- Participation in the Second National Workshop on Revision of the Labor Code, from April 20 - 23, in collaboration with the International Labor Organization (ILO).
- Research concerning the Madagascar Labor Code, and the political, economic and historical context; research on ILO Conventions ratified by the Republic of Madagascar; and, in response to the Labor Ministry's request, research concerning the U.S. labor and employment law regulatory system as it relates to the Madagascar labor market context.
- Drafting a report on the U.S. labor and employment law system, and arranging its translation into French. The report offers examples of both flexibility (such as in the measures utilized when employers must reduce employment levels in response to changed economic circumstances), and protection (such as in the laws and regulations designed to protect workers from sexual harassment).

C. Alternative Dispute Resolution

Effective and functioning Alternative Dispute Resolution mechanisms can offer several benefits to the rule of law in general and the level of economic activity in particular. First, in countries such as Madagascar, where the courts are so congested that the judicial resolution of disputes can take years, the theoretical ability to take a commercial or other dispute to court is often not a realistic option in many instances. Access to arbitration or other ADR mechanisms can offer timely remedies not available through traditional legal paths. Second, the quality of the justice dispensed under ADR may be better, especially in complicated commercial disputes where judges are not experienced but arbiters have expertise in the matters at issue. Finally, in the case of foreign investors, the ability to contractually avoid being subjected to the uncertainties of the local judicial system is often an indispensable element of a positive decision to go ahead with an investment.

Madagascar, with ARD/Checchi assistance, made major progress towards realizing a functioning arbitration system. As noted under Business Law Reform above, they have enacted a new Arbitration Law that addresses both domestic and international needs and that conforms to best international practices. Thus, they have the legal building blocks in place to create ADR mechanisms. ARD/Checchi has undertaken several promotional and training missions to promote understanding of ADR within the legal and commercial communities. Tamatave and Antsirabe have created informal ADR chapters to promote the use of arbitration and mediation, and we anticipate assisting them through more specialized training sessions in arbitration and mediation during contract year two. We also have begun organizational planning for a national arbitration and mediation organization that would be responsible for global matters, such as professional standards, licensing and training.

D. Evaluation of Results

In evaluating our results in contract year one, we looked first at the year one milestones contained in the contract's Implementation Plan (p. 23) and at ARD/Checchi's First Year Work Plan (p. 22). The First Year Work Plan's milestones went significantly beyond the contract milestones because Madagascar's business law reform and arbitration efforts had progressed beyond the stage anticipated when the contract milestones were prepared.

The contract milestones were intended to accomplish specific results. The following tables compare the contract's projected results with the First Year Work Plan's projected results and the actual results at the end of the contract year. In all instances, ARD/Checchi met or exceeded the results specified in the contract.

1. Business Law Reform

| Contract | First Year Work Plan | Actual |
|--|--|--|
| Within one of the four sectors of Business Law, one piece of draft legislation completed. | Within two of the four sectors of Business Law, two pieces of draft legislation completed. | Exceeded. Three laws related to the Company Law, two related decrees and Arbitration Law completed. All but Competition Law adopted and/or promulgated. Commentary also provided on the Company Law, the Bankruptcy Law and the Labor Code. |
| For this draft legislation, training planned and completed for trainees to be determined. | For this draft legislation, training planned and completed for trainees in Company Law. | Done. While the Company Law remains in draft and no training on it was possible, training was provided on the Arbitration Law. |
| Requisite mechanisms to sustain project designed and implemented. | Requisite mechanisms to sustain project designed and implemented. | Done. Home office mechanisms and periodic visits by LDA have enabled ARD/Checchi to fully sustain and implement contract. |
| Monitoring and Reporting System to provide measures on the progress of legal reform operational. | Monitoring and Reporting System to provide measures on the progress of legal reform operational. | Done. Monitoring and Reporting System tracks and enhances legal reform progress. |

2. ADR

| Contract | First Year Work Plan | Actual |
|--|--|---|
| Requirements for instituting effective arbitration and other ADR legislation determined. | Requirements for instituting effective arbitration and other ADR legislation determined. | Done. Arbitration Law drafted, with commentary from ARD/Checchi, adopted and promulgated. |
| One national roundtable, one media workshop, and five workshops/explanatory events for judges, attorneys, legislators and private sector held. | One national roundtable, one media workshop, and five workshops/explanatory events for judges, attorneys, legislators and private sector held. | Done. National roundtable deferred, but seven workshops or explanatory events for judges, attorneys, legislators, private sector and media held. |
| Requisite mechanisms to sustain project designed and implemented. | Requisite mechanisms to sustain project designed and implemented. | Done. Home office mechanisms and periodic visits by LDA have enabled ARD/Checchi to fully sustain and implement contract. |
| Monitoring and Reporting System to provide progress measures on the progress of ADR operational. | Monitoring and Reporting System to provide progress measures on the progress of ADR operational. | Done. ARD/Checchi monitors and reports on progress of ADR systems. |

V. LEGISLATION MONITORING AND TRACKING TABLES

A. Status, Critical Dates and Events of Legislation Reviewed by ARD/Checchi

| | Law/Regulation Name- English/French | Date | | | | |
|---|--|-----------------------|-----------------|--------------------|----------------|-------------------------|
| | | Drafting / Comment | CRDA / Other | Further Comment | NA Adoption | Official Publication |
| 1 | Arbitration Law / <i>Loi sur l'arbitrage</i> | 8/98 | 9/98 | | 11/11/98 | 12/21/98 |
| 2 | Company Law / <i>Loi sur les sociétés commerciales</i> | 9/98 | * | | | |
| 3 | Tradesman's Law / <i>Statut du commerçant</i> | 8/98 | 9/98 | | 7/7/99 | 8/16/99 |
| 4 | Competition Law / <i>Loi sur la concurrence</i> | 8/98 | 9/98 | | | |
| 5 | Transparency Law / <i>Loi sur la transparence des entreprises</i> | 8/98 | 9/98 | | 7/30/99 | 8/19/99 |
| 6 | Legal Notice for Real Property Mortgages Law / <i>Loi sur l'hypothèque judiciaire provisoire</i> | 8/98 | 9/98 | | 7/30/99 | 8/1999 |
| 7 | Commercial Registry Decree / <i>Décret sur le registre du commerce et des sociétés</i> | 8/98 | 9/98 | | | |
| 8 | Bankruptcy Law / <i>Loi sur les procédures collectives d'apurement des passifs</i> | 4/99 | ** | | | |
| 9 | Labor Code / <i>Code du travail</i> | 6/99 | *** | | | |

* CRDA initial drafting completed 9/99

** CRDA to begin consideration 9/99

*** CNE continuing drafting effort

B. Business Law Reforms and ARD/Checchi Contributions

| Law/Regulation Name- English/French | Purpose | Status | ARD/Checchi Activities |
|--|---|--|---|
| Arbitration Law / <i>Loi sur l'arbitrage</i> | Establishes legal framework for arbitration | Adopted and promulgated | Extensive commentary provided, notably on using UNCITRAL model law for international arbitration. Technical assistance incorporated in law. |
| Company Law / <i>Loi sur les sociétés commerciales</i> | Defines the legal forms of business enterprises | CRDA completed drafting process, preparing text for review by commentators | Extensive commentary provided, notably on forms of business enterprises. Extent to which technical assistance incorporated not known until text available |
| Tradesman's Law / <i>Statut du commerçant</i> | Defines what a business is and who may engage in business | Adopted and promulgated | Commentary on inclusion of foreign businesses and technical aspects of draft. Extent to which commentary incorporated under review. |
| Competition Law / <i>Loi sur la concurrence</i> | Defines fair and unfair competition practices | CRDA action completed but blocked by Ministry of Commerce | Extensive commentary aimed at liberalizing and increasing specificity. |
| Transparency Law / <i>Loi sur la transparence des entreprises</i> | Specifies the kinds of information that a business make available to the public | Adopted and promulgated | Minor technical suggestions. Extent to which commentary incorporated under review. |
| Legal Notice for Real Property Mortgages Law / <i>Loi sur l'hypothèque judiciaire provisoire</i> | Provides for public notice of liens on business property | Adopted and promulgated | Minor technical suggestions. Extent to which commentary incorporated under review. |
| Commercial Registry Decree / <i>Décret sur le registre du commerce et des sociétés</i> | Establishes commercial register | In force after being published in Official Gazette | Minor technical suggestions. Extent to which commentary incorporated under review. |

| | | | |
|--|--|---|---|
| Bankruptcy Law / <i>Loi sur les procédures collectives d'apurement des passifs</i> | Establishes legal framework for commercial enterprises to declare bankruptcy | Under review by CRDA | General guidance provided on theory and best international practices. ARD/Checchi anticipates further technical assistance during the drafting process. |
| Labor Code / <i>Code du travail</i> | Provides comprehensive framework for labor/management relations | Being drafted by Conseil National de l'Emploi | Extensive technical assistance provided on theory and best international practices. International Labor Law Expert now on second visit to assist in preparation of final draft. |

VI. LEVELS OF EFFORT PROVIDED, BY CLIN

| CLIN # | Description of Work Order | Consultant Name | Work Order # | # of Days | Total to Date | Contract LOEs |
|-------------------------|--|-------------------------|--------------|-----------|---------------|---------------|
| 0001-1 U.S.-Finance | Law Development Advisor (First Trip) | Tom Reynders | A | 2.8 | 35.8 | 125 |
| | Law Reform Assessment/ADR Survey | Steven Dinkin | 3 | 3.0 | | |
| | Finance and Company Law | Alex Blumrosen | 8 | 30.0 | | |
| 0001-2 U.S.-Company | Law Development Advisor (First Trip) | Tom Reynders | A | 16.1 | 48.1 | 125 |
| | Company and Related Laws | Alex Blumrosen | 1(a) | 25.0 | | |
| | Law Reform Assessment/ADR Survey | Steven Dinkin | 3 | 2.0 | | |
| | Finance and Company Law | Alex Blumrosen | 8 | 5.0 | | |
| 0001-3 U.S.-Property | Law Development Advisor (First Trip) | Tom Reynders | A | 0.1 | 2.1 | 125 |
| | Law Reform Assessment/ADR Survey | Steven Dinkin | 3 | 2.0 | | |
| 0001-4 U.S.-Labor | Law Development Advisor (First Trip) | Tom Reynders | A | 0.1 | 50.1 | 125 |
| | Law Reform Assessment/ADR Survey | Steven Dinkin | 3 | 1.0 | | |
| | Labor Law Drafting and Commentary | Don Zimmerman | 10 | 49.0 | | |
| 0001-5 Local-Finance | Local Review of Legislation | Ramarolanto-Ratiaray | 4 | 8.0 | 28.0 | 175 |
| | Local Identification and Justification | Louis Rajaonera | 5 | 5.0 | | |
| | Local Law Development Advisor | Ramarolanto-Ratiaray | 7 | 15.0 | | |
| 0001-6 Local-Company | Company and Related Laws | Ramarolanto-Ratiaray | 1(b) | 7.3 | 74.5 | 175 |
| | Local Review of Legislation | Ramarolanto-Ratiaray | 4 | 26.1 | | |
| | Local Identification and Justification | Ramarolanto-Ratiaray | 5 | 26.1 | | |
| | Local Law Development Advisor | Ramarolanto-Ratiaray | 7 | 15.0 | | |
| 0001-7 Local-Property | Company and Related Laws | Ramarolanto-Ratiaray | 1 (b) | 7.3 | 34.3 | 175 |
| | Local Review of Legislation | Ramarolanto-Ratiaray | 4 | 7.0 | | |
| | Local Identification and Justification | Louis Rajaonera | 5 | 5.0 | | |
| | Local Law Development Advisor | Ramarolanto-Ratiaray | 7 | 15.0 | | |
| 0001-8 Local-Labor | Local Review of Legislation | Ramarolanto-Ratiaray | 4 | 6.0 | 108.3 | 175 |
| | Local Identification and Justification | Ramarolanto-Ratiaray | 5 | 5.0 | | |
| | Local Law Development Advisor | Ramarolanto-Ratiaray | 7 | 15.0 | | |
| | Finance and Company Law | Ramarolanto-Ratiaray | 8 | 7.3 | | |
| | Labor Law Drafting and Commentary | Andrianarimanana Mboara | 10 | 75.0 | | |
| 0001-9 U.S.-ADR Support | Law Development Advisor (First Trip) | Tom Reynders | A | 17.3 | 106.3 | 100 |
| | Arbitration Law Commentary | Alex Blumrosen | 2 | 25.0 | | |
| | Baseline ADR Survey | Howie Clavier | 3 | 20.0 | | |
| | Alternative Dispute Resolution | Howie Clavier | 9 | 44.0 | | |

| | | | | | | |
|--------------------------------|-----------------------------------|-------------------------|---|-------|-------|------|
| 0001-10 U.S.-ADR Sensitization | Baseline ADR Survey (Promotional) | Howie Clavier | 3 | 5.0 | 38.0 | 75 |
| | Baseline ADR Survey (Promotional) | Steven Dinkin | 3 | 2.0 | | |
| | Alternative Dispute Resolution | Howie Clavier | 9 | 19.0 | | |
| | Alternative Dispute Resolution | Alex Blumrosen | 9 | 12.0 | | |
| 0001-11 Local-ADR Association | Baseline ADR Survey | Louis Rajaonera | 3 | 4.0 | 9.8 | 50 |
| | Local Law Development Advisor | Ramarolanto-Ratiaray | 7 | 5.8 | | |
| 0001-12 Local-ADR ToT | Baseline ADR Survey | Ramarolanto-Ratiaray | 3 | 20.0 | 47.0 | 50 |
| | Alternative Dispute Resolution | Andrianarimanana Mboara | 9 | 7.0 | | |
| | Alternative Dispute Resolution | Louis Rajaonera | 9 | 20.0 | | |
| 0001-13 Local Follow-Up | Local Follow Up and Management | Andrianarimanana Mboara | 6 | 6.0 | 6.0 | 100 |
| 0001-14 Local Management | Local Follow Up and Management | Andrianarimanana Mboara | 6 | 6.0 | 6.0 | 25 |
| TOTALS | | | | 594.1 | 594.1 | 1600 |

VII. WORK ORDERS

| WORK ORDER | DESCRIPTION OF WORK ORDER | CONSULTANT (S) |
|-------------------|--|--|
| A | Law Development Advisor | Thomas Reynders |
| 1(a) | Company Law Commentary | Alexander Blumrosen |
| 1(b) | Company Law Commentary | Ratiaray Ramarolanto |
| 2 | Arbitration Law Commentary | Alexander Blumrosen |
| 3 | ADR Survey/Promotional Conference (Commercial Law Reform Assessment) | Howie Clavier, Ratiaray Ramarolanto, Louis Rajaonera, Steven Dinkin |
| 4 | Local Review of Legislation | Ratiaray Ramarolanto |
| 5 | Local Identification and Justification of Business Laws Requiring Reform | Ratiaray Ramarolanto, Louis Rajaonera |
| 6 | Local Management and Follow-Up | Mboara Andrianarimanana |
| 7 | Local Law Development Advisor | Ratiaray Ramarolanto |
| 8 | Finance and Company Law | Alexander Blumrosen |
| 9 | Alternative Dispute Resolution | Howie Clavier, Alexander Blumrosen, Mboara Andrianarimanana, Louis Rajaonera |
| 10 | Labor Law Drafting and Commentary | Don Zimmerman, Mboara Andrianarimanana |

ATTACHMENT 1 YEAR ONE WORK PLAN MILESTONES

Business Law Reform Milestones

| | Milestone | Month |
|------|---|--------------|
| 1.1 | First Year Work Plan for Business Law Reform | 8/98 |
| 1.2 | Monitoring and Reporting System to Provide Indicator Data and Tracking Measures on the Progress of Legal Reform | 8/98 |
| 1.3 | Review of Existing and Proposed Legislation, Verification of Background Materials Concerning Business Law Reform, and Familiarization with Activities of Other Donors | 9/98 |
| 1.4 | First Quarterly Report | 9/98 |
| 1.5 | Identification and Justification of Business Laws Requiring Reform | 9/98 |
| 1.6 | Company Law and Related Laws Drafted | 9/98 |
| 1.7 | Prioritized Planning and Training Schedules for Law Reform | 11/98 |
| 1.8 | Second Quarterly Report | 12/98 |
| 1.9 | Sixth Month Review with COTR | 1/99 |
| 1.10 | Curriculum for In-Service Training at the ENMG in Company Law | 3/99 |
| 1.11 | Third Quarterly Report | 3/99 |
| 1.12 | Second Draft Business Reform Law Drafted | 4/99 |
| 1.13 | In-Service Training on Company Law | 5/99 |
| 1.14 | Assessment of Use of Legal Reform Texts by CRDA and National Assembly and Impacts on Private Sector Development | 5/99 |

ADR Milestones

| | Milestone | Month |
|------|---|--------------|
| 2.1 | First Year Work Plan for Alternative Dispute Resolution Systems | 8/98 |
| 2.2 | Review of Existing and Proposed ADR Legislation, and Verification of Existing Background Materials Concerning ADR in Madagascar | 8/98 |
| 2.3 | Monitoring and Reporting System to Provide Indicator Data and Tracking Measures on the Progress of ADR Activities | 8/98 |
| 2.4 | Baseline Survey of ADR Awareness | 9/98 |
| 2.5 | First Quarterly Report | 9/98 |
| 2.6 | National Roundtable on Arbitration | 11/98 |
| 2.7 | International and Domestic ADR Working Groups Formed | 11/98 |
| 2.8 | Second Quarterly Report | 12/98 |
| 2.9 | Training Materials for Workshops and Explanatory Events | 12/98 |
| 2.10 | Sixth Month Review with COTR | 1/99 |
| 2.11 | ADR Workshop/Explanatory Event in Antananarivo | 1/99 |
| 2.12 | ADR Training and Promotional Event for the Media | 2/99 |
| 2.13 | Third Quarterly Report | 3/99 |
| 2.14 | ADR Workshop/Explanatory Event in Two Cities for Judges, Attorneys, and Legislators | 4/99 |
| 2.15 | ADR Workshop/Explanatory Events in Two Cities for Private Sector in Two Cities | 5/99 |
| 2.16 | Curriculum for Training Members of Arbitration Bodies | 5/99 |

ATTACHMENT 2 CONTRACT MILESTONES

Business Law Reform

| | Milestones | Month |
|------|--|-------|
| 1.1 | First Year Work Plan for Component I completed. | 1 |
| 1.2 | Monitoring and Reporting System to provide indicator data and tracking measures on the progress of legal reform developed. | 2 |
| 1.3 | Review of existing and proposed legislation, verification of existing background materials concerning the legal problems and requirements in Business Law Reform, and familiarization with activities (present and planned) of other donors completed. | 3 |
| 1.4 | Quarterly Report submitted. | 4 |
| 1.5 | Identification and justification of Business Laws requiring reform prepared. | 5 |
| 1.6 | Prioritized planning and training schedules for law reform prepared. | 6 |
| 1.7 | Quarterly Report submitted. | 7 |
| 1.8 | Sixth Month Review with COTR. | 7 |
| 1.9 | Draft of one legal reform text in a selected area of Business Law prepared. | 9 |
| 1.10 | Curriculum for in-service training at the ENMG in the area covered under 1.9 above planned. | 10 |
| 1.11 | Quarterly Report submitted. | 10 |
| 1.12 | In-service training based upon curriculum in 1.10 above completed. Numbers and occupations of trainees and length of training to be determined under 1.6. | 11 |
| 1.13 | Use of draft legal reform texts by Reform Commission and National Assembly and actual and potential impacts on private sector development assessed. | 12 |

ADR

| | Milestones | Month |
|------|--|-------|
| 1.1 | First Year Work Plan for Component II completed. | 1 |
| 1.2 | In conjunction with the <i>Cellule technique</i> and the ADR Working Group, review of existing and proposed ADR legislation, and verification of existing background materials concerning ADR in Madagascar completed and recommendations on legislative requirements to establish a functional arbitration system submitted to the <i>Cellule technique</i> . | 2 |
| 1.3 | Baseline survey of public and professional awareness of ADR possibilities, undertaken in conjunction with the ADR Working Group, completed. | 3 |
| 1.4 | ADR component activities performance indicators incorporated into the Monitoring and Reporting System. | 3 |
| 1.5 | Quarterly Report submitted. | 4 |
| 1.6 | National roundtable on Arbitration, with representatives from National Assembly, courts, Ministries of Justice and Commerce, and private sector stakeholders organized and conducted. | 5 |
| 1.7 | Two working groups focusing on international and domestic issues formed. | 5 |
| 1.8 | Training materials for Workshops and explanatory events developed. | 6 |
| 1.9 | Workshop/explanatory event held in Antananarivo. | 7 |
| 1.10 | Quarterly Report submitted. | 7 |
| 1.11 | Sixth Month Review with COTR. | 7 |
| 1.12 | ADR training and promotional event for the media held. Publication of materials by media in numbers to be determined. | 7 |
| 1.13 | ADR workshops/explanatory events conducted in two cities for judges, attorneys, and legislators. | 10 |
| 1.14 | Quarterly Report submitted. | 10 |
| 1.15 | Curriculum for training future members of arbitration body(ies) developed. | 12 |
| 1.16 | ADR workshops/explanatory private sector events conducted in two cities. | 12 |